FINAL

Commonwealth of Virginia
Virginia Department of Health

Order Finding Imminent Danger To The Public Health And Requiring Corrective Action

AUTHORITY

This Order is issued pursuant to the authority given to the Board of Health by the *Code of Virginia* § 32.1-13 to meet any emergency and suppress nuisances dangerous to the public health, and the Commissioner's authority to act for the Board of Health when it is not in session (*Code of Virginia* § 32.1-20).

FINDINGS

The Commissioner finds that an emergency exists regarding the health and safety of the citizens of the Commonwealth. Substances used in clandestine methamphetamine (meth) laboratories (labs) often are corrosive, explosive, flammable, and toxic and can cause fires, explosions, and other uncontrolled reactions. These laboratories may be found in various environments, including motel rooms, private residences, campgrounds, and motor vehicles.

The manufacture of meth has increased in Virginia. In 2004, there were 61 lab seizures. While most of the meth available in this country is produced and trafficked by well-organized groups from outside of the United States, the domestic production of meth has become a significant problem. Virginia-based criminal groups and local independent dealers have become adept in extracting ephedrine or pseudoephedrine from common over-the-counter (OTC) cold medications purchased at retail stores and pharmacies to produce the drug. Meth is relatively easy to produce and information on its production is easily available on the Internet.

The proliferation of these clandestine labs produces a variety of health hazards with consequences for law enforcement personnel, first responders (firefighters, emergency medical technicians [EMT], and HAZMAT workers), and other persons, including children, living at or near the clandestine lab (an estimated 20% of meth labs have children present). Specifically, these hazards are:

1. Burn injuries associated with laboratory accidents that cause explosions and fires (an estimated 20%--30% of known meth labs are discovered because of fires and explosions)

FINAL

2. If liquid anhydrous ammonia is accidentally released into ambient air, it expands substantially, forming large vapor clouds. Symptoms of anhydrous ammonia exposure include eye, nose, and throat irritation; dyspnea; wheezing; chest pain; pulmonary edema; pink frothy sputum; skin burns; vesiculation; and frostbite. Exposure can be fatal at high concentrations
3. In a national study of 36 events causing injuries to first responders, 12 (33.3%) involved anhydrous ammonia and 11 (30.6%) involved hydrochloric acid. In 33 (91.7%) of the 36 events for which the type of release was known, 19 (57.6%) involved air emissions, 10 (30.3%) involved fires, and seven (21.2%) involved explosions.
4. Hazardous substances released during and after an event usually enter the body by inhalation and skin absorption; acute exposures may result in cough, headache, chest pain, burns, pulmonary edema, respiratory failure, coma, and death.
5. For every pound of methamphetamine produced, 5 to 6 pounds of toxic waste are left behind. Although law enforcement personnel usually handle the majority of the cleanup and disposal related to these makeshift labs, potentially hazardous chemical residues may be left on absorbent surfaces (e.g., carpets, furniture, and drapes), as well as sinks, drains, and ventilation systems. Major methamphetamine-related contaminants include volatile organic compounds, acids, bases, explosives, metals, iodine, and phosphorous.
6. As a recreational drug, meth carries risks with its use. These include acute toxic effects from overdose and indirect effects associated with altered behavior.

CORRECTIVE ACTION

Pursuant to the authority granted to the Commissioner of the Virginia Department of Health, it is so ordered that any product containing ephedrine, pseudoephedrine, or any of their salts, isomers, or salts of isomers, alone or in a mixture, be restricted for sale. If these substances are provided or sold by a retail distributor or pharmacy, the retail distributor or pharmacy shall ensure the following measures:

I. Retail sales are limited to three (3) individual packages (no more than 9 grams total of active ingredient) per transaction.

II. Retail personnel must be trained with respect to special procedures used in the sale of covered OTC drug products containing ephedrine or pseudoephedrine.

III. Single Active Ingredient Product (any substance in which ephedrine or pseudoephedrine is the only active ingredient):
    1. Product may only be displayed for sale behind a store counter (not necessarily a pharmacy counter) that is not accessible to consumers, or in a locked case that requires assistance by a store employee for customer access.
    2. Any person purchasing, receiving, or otherwise acquiring any such substance, shall, prior to taking possession, present government-issued or educational-institution-issued photo identification. The seller must record in a written or electronic log the purchaser’s name, quantity sold, and the date of the

FINAL

transaction. The purchaser must sign the record acknowledging an understanding of the applicable sales limit.

3. Records of these transactions must be maintained by the establishment for at least one year from the date of each purchase. Using or disclosing the information in the log for any purpose other than to ensure compliance with this Order or to facilitate a product recall necessary to protect public health and safety is prohibited. Any willful disclosure of this information shall result in penalties as described in § 32.1-27 of the *Code of Virginia*. Disclosure of the information in the log to law enforcement personnel is required upon request.

IV. Multi-active Ingredient Product (any substance in which ephedrine or pseudoephedrine is one of two or more active ingredients)

1. Product may only be displayed for sale behind a store counter (not necessarily a pharmacy counter) that is not accessible to consumers, OR in a locked case that requires assistance by a store employee for customer access, OR sold from the sales floor if the retailer adopts at least one of the following four options:
    a) Product must be kept within 30 feet and direct line of sight of a cash register or store counter staffed by one or more store employees;
    b) Reliable anti-theft devices are used on packages;
    c) Restricted access shelving is used so that only one package may be removed by a consumer at a time and a delay of at least 15 seconds occurs between package replacement on shelf;
    d) Product is kept under constant video surveillance.

EXEMPTIONS

Liquid, liquid capsule, and gel capsule products containing pseudoephedrine are exempt from this order.

This order shall not apply to the sale of pediatric products containing pseudoephedrine or ephedrine, their salts or optical isomers, or salts of optical isomers where the pediatric product (A) is primarily intended for administration to children under 12 years of age, according to label instructions, and is either in solid dosage form with individual dosage units not exceeding 15 milligrams of ephedrine or pseudoephedrine; or in liquid form and recommended dosage units do not exceed 15 milligrams of ephedrine or pseudoephedrine per 5 milliliters of liquid product; or (B) is in liquid form primarily intended for administration to children under 2 years of age with a recommended dosage not exceeding 2 milliliters, and the total package contains not more than 1 fluid ounce.

The Board of Health, by rule, may exempt a product from this Order if the Board determines that the product cannot be used in the illegal manufacture of meth or any other controlled dangerous substance.

FINAL

PRESCRIPTIONS

The limits described above shall not apply to any quantity of such substance properly dispensed under a valid prescription.

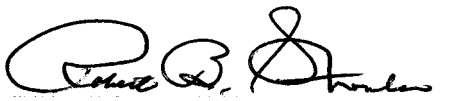
PENALTIES

Any person willfully violating or refusing, failing or neglecting to comply with this Order shall be guilty of a Class 1 misdemeanor as set forth in § 32.1-27 of the *Code of Virginia*.

EFFECTIVE DATE

The effective date of this order is October 1, 2005. The Virginia Department of Health will work with representatives of the affected industries to minimize the burden of implementing this order while assuring that its provisions are in place as expeditiously as practicable. This order shall be in effect until July 1, 2006.

Entered this the 15th day of September 2005

Signature: 

Robert B. Stroube, MD, MPH
State Health Commissioner